



655 Fifteenth Street, NW, Suite 225
Washington, DC 20005

balljanik.com

t 202 638 3307
f 202 783.6947



234926

September 30, 2013

Karl Morell
Of Counsel
kmorell@balljanik.com

BY HAND DELIVERY

Cynthia Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

Re: Finance Docket No. 35755, BNSF Railway Company, CBEC
Railway Inc., Iowa Interstate Railroad, Ltd., and Union
Railroad Company - Joint Relocation Project Exemption - In
Council Bluffs, IA

Dear Ms. Brown:

Attached for filing with the Board please find the original and ten
copies of the Verified Notice of Exemption pursuant to the
provisions of 49 C.F.R. § 1180.2(d)(5). Enclosed is a check in the
amount of \$2,500 to cover the filing fee.

Please time and date stamp the extra copy of the Notice and return
it with our messenger.

ENTERED
Office of Proceedings
SEP 30 2013
Part of
Public Record

Respectfully submitted,

Karl Morell
Of Counsel

FILED

SEP 30 2013

**SURFACE
TRANSPORTATION BOARD**

Enclosures

FEE RECEIVED

SEP 30 2013

**SURFACE
TRANSPORTATION BOARD**

Portland, Oregon

| Bend, Oregon

| Seattle, Washington

| Washington, DC

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35755

FILED
SEP 30 2013
SURFACE
TRANSPORTATION BOARD

BNSF RAILWAY COMPANY, CBEC RAILWAY INC., IOWA INTERSTATE RAILROAD,
LTD., AND UNION PACIFIC RAILROAD COMPANY
--JOINT RELOCATION PROJECT EXEMPTION--
IN COUNCIL BLUFFS, IA

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1180.2(d)(5)

ENTERED
Office of Proceedings
SEP 30 2013
Part of
Public Record

Courtney Biery Estes
General Attorney
BNSF Railway Company
2500 Lou Menk Drive AOB-3
Fort Worth, Texas 76131
(817) 352-2351

Attorneys for:
BNSF Railway Company

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

Attorneys for:
Iowa Interstate Railroad, Ltd

Karl Morell
Of Counsel
BALL JANIK LLP
Suite 225
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Attorneys for:
BNSF Railway Company

Benjamin M. Clark
Sullivan & Ward, P.C.
6601 Westown Parkway, Suite 200
West Des Moines, Iowa 50266-7733
(515) 244-3500

Attorneys for:
CBEC Railway Inc.

Jeremy M. Berman
Assistant General Attorney
Union Pacific Railroad Company
1400 Douglas Street
STOP 1580
Omaha, NE 68179

Attorneys for:
Union Pacific Railroad Company

FEE RECEIVED

SEP 30 2013

SURFACE
TRANSPORTATION BOARD

Dated September 30, 2013

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35755

BNSF RAILWAY COMPANY, CBEC RAILWAY INC., IOWA INTERSTATE RAILROAD,
LTD , AND UNION PACIFIC RAILROAD COMPANY
--JOINT RELOCATION PROJECT EXEMPTION--
IN COUNCIL BLUFFS, IA

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1180.2(d)(5)

BNSF Railway Company ("BNSF"), CBEC Railway Inc. ("CBEC") Iowa Interstate Railroad, Ltd. ("IAIS") and Union Pacific Railroad Company ("UP") jointly file this Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(5), for a joint relocation project in Council Bluffs, Iowa (the "City" or "Council Bluffs"). The joint relocation project will not disrupt service to shippers

In support of this Notice of Exemption, BNSF, CBEC and IAIS submit the following information as required by 49 C.F.R. § 1180.4(g):

Section 1180.6(a)

- (1) A description of the proposed transaction.
 - (i) A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of counsel to whom questions regarding the proposed transaction can be addressed.

The joint relocation project will facilitate the reconstruction of the interchange of I-80 and I-29 in Council Bluffs, Iowa (the "Project"). The Council Bluffs interstate system was constructed in the 1960s and was developed to the design standards of the 1950s and 1960s. In

1997, the city of Council Bluffs and Metropolitan Area Planning Agency conducted a study of the interstate system in Council Bluffs. This study, known as the Council Bluffs Interstate System Needs Study ("1997 Study"), showed that many of the system's features do not meet current design standards, guidelines or operational criteria and do not provide adequate traffic capacity

In 2002, the Iowa Department of Transportation ("Iowa DOT") initiated the Council Bluffs Interstate System ("CBIS") improvements project to address the issues raised in the 1997 Study. The Project is a multi-year effort that will result in reconstruction of the majority of the Council Bluffs Interstate System.

To facilitate the Project, BNSF, CBEC and IAIS will undertake the following track realignments.

BNSF will close its Council Bluffs yard and convey the underlying land to the State of Iowa. No prior approval from the Board is required for the removal of the yard tracks. *See* 49 U.S.C. § 10906; *Nicholson v. ICC*, 711 F.2d 364 (D.C. Cir. 1983); *Battaglia Distributing Co. v. Burlington Northern*, 2 S.T.B. 323 (1997); STB Finance Docket No. 35161, *Joseph R. Fox – Petition For Declaratory Order* (not printed), served May 18, 2009.

BNSF will abandon the following two segments of its Council Bluffs Subdivision. (1) the segment located between milepost 490.62 and milepost 491.00, a distance of approximately 0.38 miles (See Exhibit 1); and (2) the segment located between milepost 491.75 and milepost 492.65, a distance of approximately 0.90 miles (See Exhibit 2). The first segment will be relocated to the west of Mosquito Creek. (See the hashed orange line on Exhibit 3). This segment is located between BNSF Bayard Subdivision milepost 482.08 (point A) and a point near BNSF Council Bluffs Subdivision milepost 488.85 (point D), a distance of approximately 1.6 miles. (See Exhibit 3). The second segment will be relocated to the west of the Highway 192 overpass in

downtown Council Bluffs. (See the hashed orange line on Exhibit 3). This segment is located between BNSF milepost 492.65 and the connection to IAIS mainline at IAIS milepost 489.3 (point H), a distance of approximately 0.3 miles. (See Exhibit 3).

CBEC will abandon its main line between milepost 3.90 (set forth in the UP track chart) approximately 1,500 feet to the northwest of IA-92/US-275 (point E) and milepost 6.47 (set forth in the UP track chart) at CBEC Junction (point F), a distance of approximately 2.8 miles. (See the turquoise line between points E and F on Exhibit 4). That portion of CBEC's main line will be relocated to the west bank of Mosquito Creek between milepost 3.90 (set forth in the UP track chart) approximately 1,500 feet to the northwest of IA-92/US-275 (point E) and the connection with the lead track to MidAmerican Energy Company's Walter Scott, Jr. Energy Center (point G), a distance of approximately 1.5 miles. (See the hashed red line between points E and G on Exhibit 4).

Union Pacific Railroad Company ("UP") currently holds limited local trackage rights over CBEC's main line. See STB Finance Docket No. 33827, Union Pacific Railroad Company -- Trackage Rights Exemption -- CBEC Railway, Inc. (not printed), served December 21, 1999. The portion of those trackage rights on CBEC's line to be abandoned (turquoise line between points E to F) will be discontinued and relocated to CBEC's newly-constructed main line (red hashed line between points E to G). (See Exhibit 4).

BNSF and CBEC will establish a crossover connection between their newly-constructed and parallel main lines on the west side of Mosquito Creek at a point approximately 900 feet south of I-29 (point B). CBEC will grant overhead trackage rights to BNSF from the connection

at point B to the connection with the lead track to MidAmerican Energy Company's Walter Scott, Jr. Energy Center at point G, a distance of approximately 0.6 miles. (See Exhibit 4).¹

BNSF and CBEC also will establish an opposite-direction crossover connection between their newly-constructed and parallel main lines on the west side of Mosquito Creek at a point approximately 1,400 feet south of I-29 (point C). BNSF will grant overhead trackage rights to CBEC from the connection at point C to a new connection with CBEC's-relocated SIRE industrial lead track at BNSF Council Bluffs Subdivision milepost 488.85 (point D), a distance of approximately 1,500 feet. (See Exhibit 5).

BNSF will grant overhead trackage rights to IAIS between BNSF Bayard Subdivision milepost 482.08 (point A) and BNSF Council Bluffs Subdivision milepost 488.6 (point F). (See Exhibit 3)

BNSF and IAIS will establish new connections between the two carriers at BNSF Bayard Subdivision milepost 482.08 (point A) and IAIS milepost 489.30 (point H).² (See Exhibit 3).

The proposed joint relocation project will not disrupt service to shippers. There are no shippers located on the rail segments BNSF and CBEC are abandoning. Also, the construction of the new segments will not involve an expansion of service by BNSF, CBEC or IAIS into a new territory. The new tracks will simply preserve the carriers' ability to serve existing customers in the area. Accordingly, the proposed joint relocation project qualifies for the class exemption at 49 C.F.R. § 1180.2(d)(5).³

¹ CBEC also will grant overhead trackage rights to BNSF from BNSF Council Bluffs Subdivision milepost 488.6 (point F) to point G, a distance of approximately 0.5 miles. (See Exhibit 4).

² The connection at Point H will enable BNSF to crossover IAIS from its Council Bluffs subdivision to reach its Bayard subdivision through a dual switch arrangement.

³ In Finance Docket No. 35751, *Iowa Interstate Railroad, Ltd. - Acquisition Exemption - Line of BNSF Railway Company*, IAIS is seeking an exemption to acquire an approximately 0.75-mile BNSF rail line in Council Bluffs extending from milepost 491.00 to 491.75 on BNSF's Council Bluffs Subdivision. While that transaction is also intended to facilitate the Project, IAIS is filing separately because, in IAIS's view, that transaction does not fall within the scope of the joint relocation exemption because it involves a change in the existing rail service provider to two rail customers.

The Board will exercise jurisdiction over the abandonment or construction component of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into a new territory. *See City of Detroit v. Canadian National Ry Co., et al*, 9 I.C.C.2d 1208 (1993), *aff'd sub nom*, *Detroit/Wayne County Port Authority v. ICC*, 59 F.3d 1314 (D.C. Cir 1995). Also, line relocation projects may embrace trackage rights. *See D.T. & I.R.—Trackage Rights*, 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, new connections and trackage rights components of this relocation project require no separate approval or exemption since the project will not disrupt service to shippers, expand BNSF's CBEC's and IAIS's service into a new territory, or alter the existing competitive situation.

The name and business address of Applicants are as follows:

BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131

Iowa Interstate Railroad, Ltd.
5600 6th Street, S.W.
Cedar Rapids, IA 52404

CBEC Railway Inc
2600 Grand Avenue, Suite 410
Des Moines, Iowa 50312

Union Pacific Railroad Company
1400 Douglas Street
STOP 1580
Omaha, NE 68179

BNSF's representatives:

Karl Morell
Of Counsel
Ball Janik LLP
655 Fifteenth Street, N.W.
Suite 225
Washington, D.C. 20005
(202) 638-3307

Courtney Biery Estes
General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131

CBEC's representative:

Benjamin M. Clark
Sullivan & Ward, P.C.
6601 Westown Parkway, Suite 200
West Des Moines, Iowa 50266-7733
(515) 244-3500

LAIS's representative:

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1508

UP's representative:

Jeremy M. Berman
Assistant General Attorney
Union Pacific Railroad Company
1400 Douglas Street
STOP 1580
Omaha, NE 68179

(ii) The proposed time schedule for consummation of the proposed transaction.

The transaction will be consummated sometime after the effective date of this

Notice of Exemption, but no sooner than October 30, 2013.

(iii) The purpose sought to be accomplished by the proposed transaction.

The joint relocation project will facilitate Iowa DOT's CBIS improvement project in downtown Council Bluffs, and is being undertaken in close coordination and cooperation with IOWA DOT.

- (a)(5) A list of the State(s) in which any part of the property of each applicant carrier is situated.

The relocation project is located in the State of Iowa.

BNSF is situated in the States of Alabama, Arizona, Arkansas, California, Colorado, Idaho, Illinois, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming

CBEC is situated in the State of Iowa.

IAIS is situated in the States of Iowa and Illinois.

- (a)(6) Map.

Maps illustrating the tracks involved in this joint relocation project are attached as Exhibits 1 through 6.

- (a)(7)(i) Agreement.

A copy of the Master Agreement between BNSF and Iowa DOT is attached as Exhibit 7. A copy of the Master Agreement between CBEC and Iowa DOT is attached as Exhibit 8. A copy of the Letter of Understanding between CBEC and BNSF is attached as Exhibit 9. A copy of the Master Agreement between IAIS and Iowa DOT is attached as Exhibit 10.

BNSF, CBEC and IAIS are agreeable to the labor protection conditions imposed in trackage rights proceedings as found in *Norfolk and Western Ry. Co - Trackage Rights - BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc - Lease and Operate - California Western Railroad*, 360 I.C.C. 653 (1980).

This action will not significantly affect either the quality of the human environment or energy conservation. Environmental impacts associated with trackage rights generally are considered to be insignificant. Therefore, an environmental report and documentation normally need not be submitted for this type of transaction, pursuant to 49 C.F.R. § 1105.6(c) and the proposed transactions are exempt from historic reporting requirements under 49 C.F.R. §

1105.8(b). The incidental abandonment and construction of new tracks are transactions which are not subject to the Board's jurisdiction in this proposed relocation project.

Respectfully submitted,



Courtney Biery Estes
General Attorney
BNSF Railway Company
2500 Lou Menk Drive AOB-3
Fort Worth, Texas 76131
(817) 352-2351

Attorneys for:
BNSF Railway Company

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

Attorneys for:
Iowa Interstate Railroad, Ltd

Karl Morell
Of Counsel
BALL JANIK LLP
Suite 225
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Attorneys for:
BNSF Railway Company

Benjamin M. Clark
Sullivan & Ward, P.C.
6601 Westown Parkway, Suite 200
West Des Moines, Iowa 50266-7733
(515) 244-3500

Attorneys for:
CBEC Railway Inc

Jeremy M. Berman
Assistant General Attorney
Union Pacific Railroad Company
1400 Douglas Street
STOP 1580
Omaha, NE 68179

Attorneys for:
Union Pacific Railroad Company

Dated: September 30, 2013

EXHIBIT 1

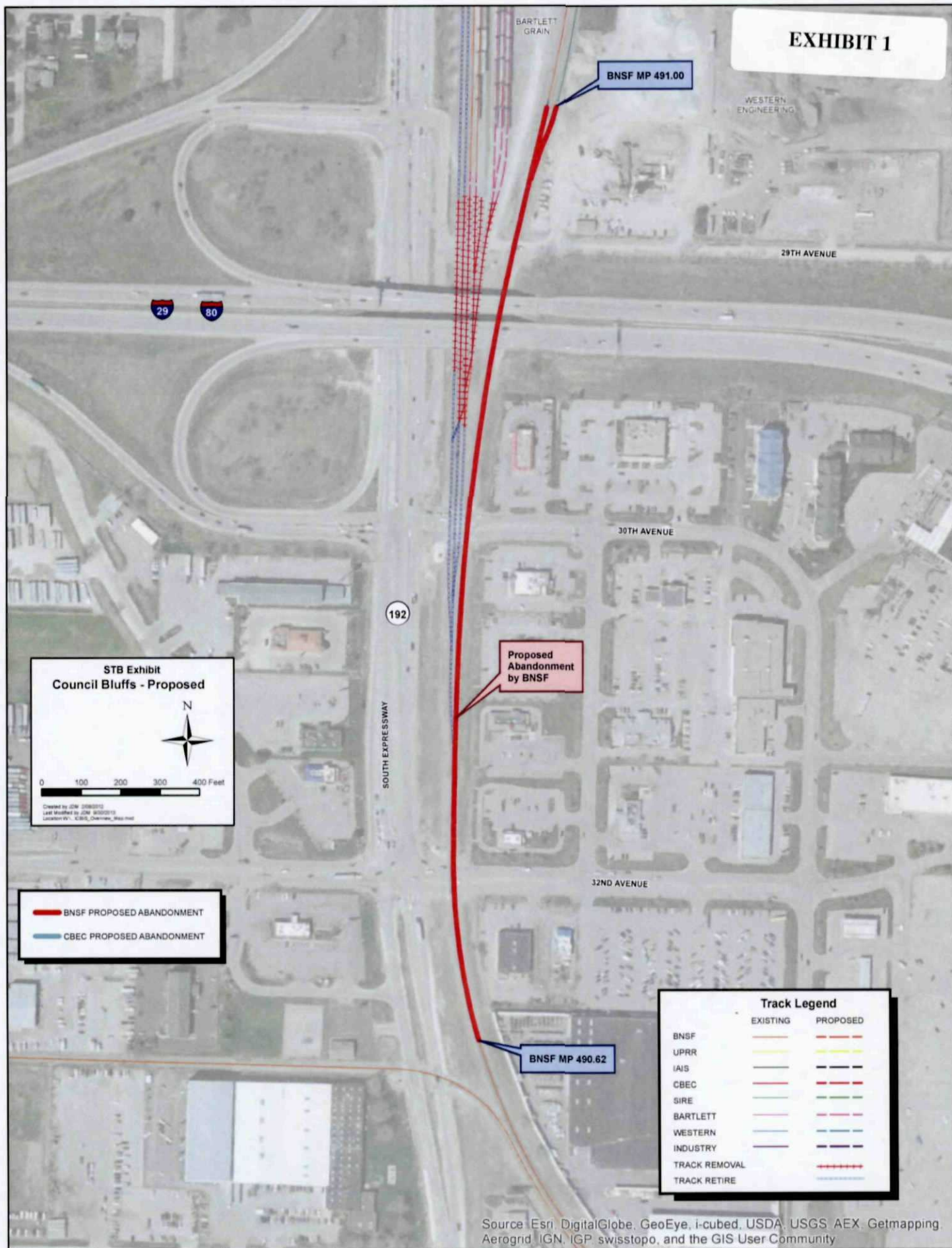


EXHIBIT 2

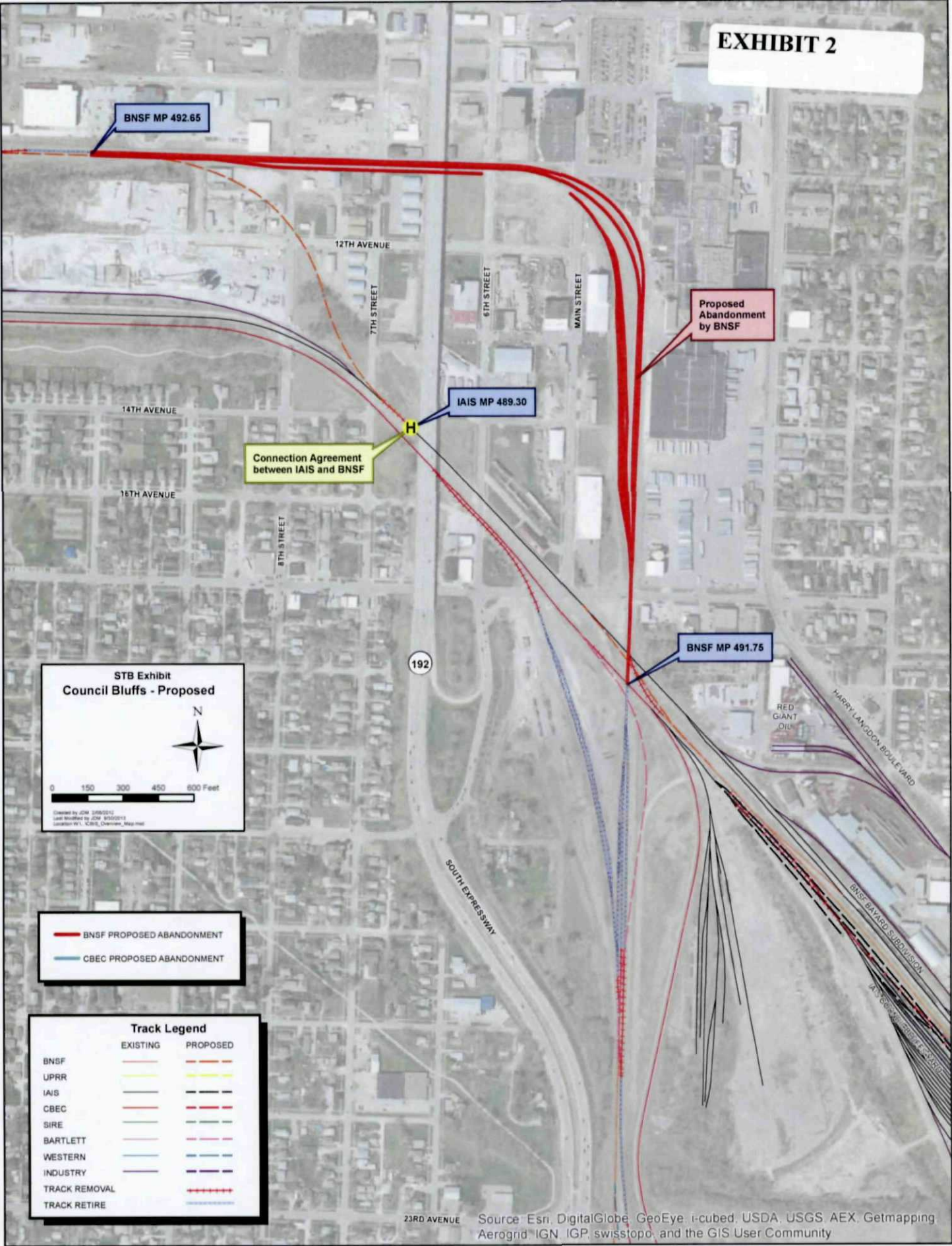


EXHIBIT 3

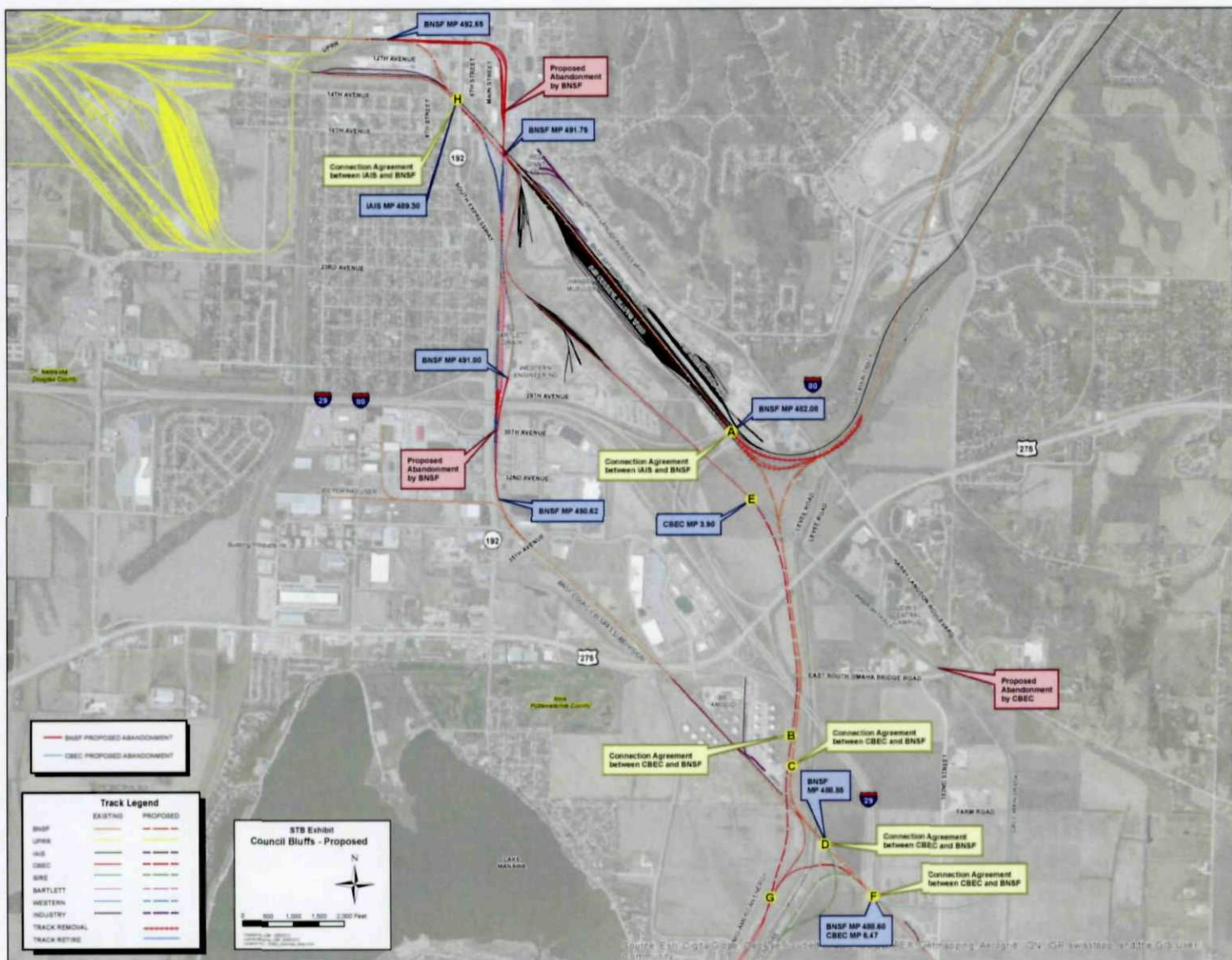


EXHIBIT 4

Track Legend

	EXISTING	PROPOSED
BNSF		
UPRR		
IAIS		
CBEC		
SIRE		
BARTLETT		
WESTERN		
INDUSTRY		
TRACK REMOVAL		
TRACK RETIRE		

BNSF PROPOSED ABANDONMENT
 CBEC PROPOSED ABANDONMENT

STB Exhibit Council Bluffs - Proposed



0 250 500 750 1,000 Feet

Created by JDM 03/05/12
 Last modified by JDM 03/05/12
 Location: 101 - 10101 - Council Bluffs, IA

Connection Agreement
between CBEC and BNSF

Connection Agreement
between CBEC and BNSF

BNSF MP 488.85

Connection Agreement
between CBEC and BNSF

Connection Agreement
between CBEC and BNSF

BNSF MP 488.60
CBEC MP 6.47

Proposed
Abandonment
by CBEC

Source: Esri, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

EXHIBIT 5



C

Connection Agreement
between CBEC and BNSF

LEVEE ROAD

STB Exhibit
Council Bluffs - Proposed

0 50 100 150 200 Feet

Created by JDM 10/26/2012
Last Modified by JDM 10/26/2012
Location: CB, Council Bluffs, Iowa

BNSF PROPOSED ABANDONMENT

CBEC PROPOSED ABANDONMENT

	Track Legend	
	EXISTING	PROPOSED
BNSF		
UPRR		
IAIS		
CBEC		
SIRE		
BARTLETT		
WESTERN		
INDUSTRY		
TRACK REMOVAL		
TRACK RETIRE		

Connection Agreement
between CBEC and BNSF

BNSF MP 488.85

D

TO MID-AMERICAN ENERGY

EXHIBIT 6

	EXISTING	PROPOSED
BNSF		
UPRR		
IAIS		
CBEC		
SIRE		
BARTLETT		
WESTERN		
INDUSTRY		
TRACK REMOVAL		
TRACK RETIRE		

	BNSF PROPOSED ABANDONMENT
	CBEC PROPOSED ABANDONMENT

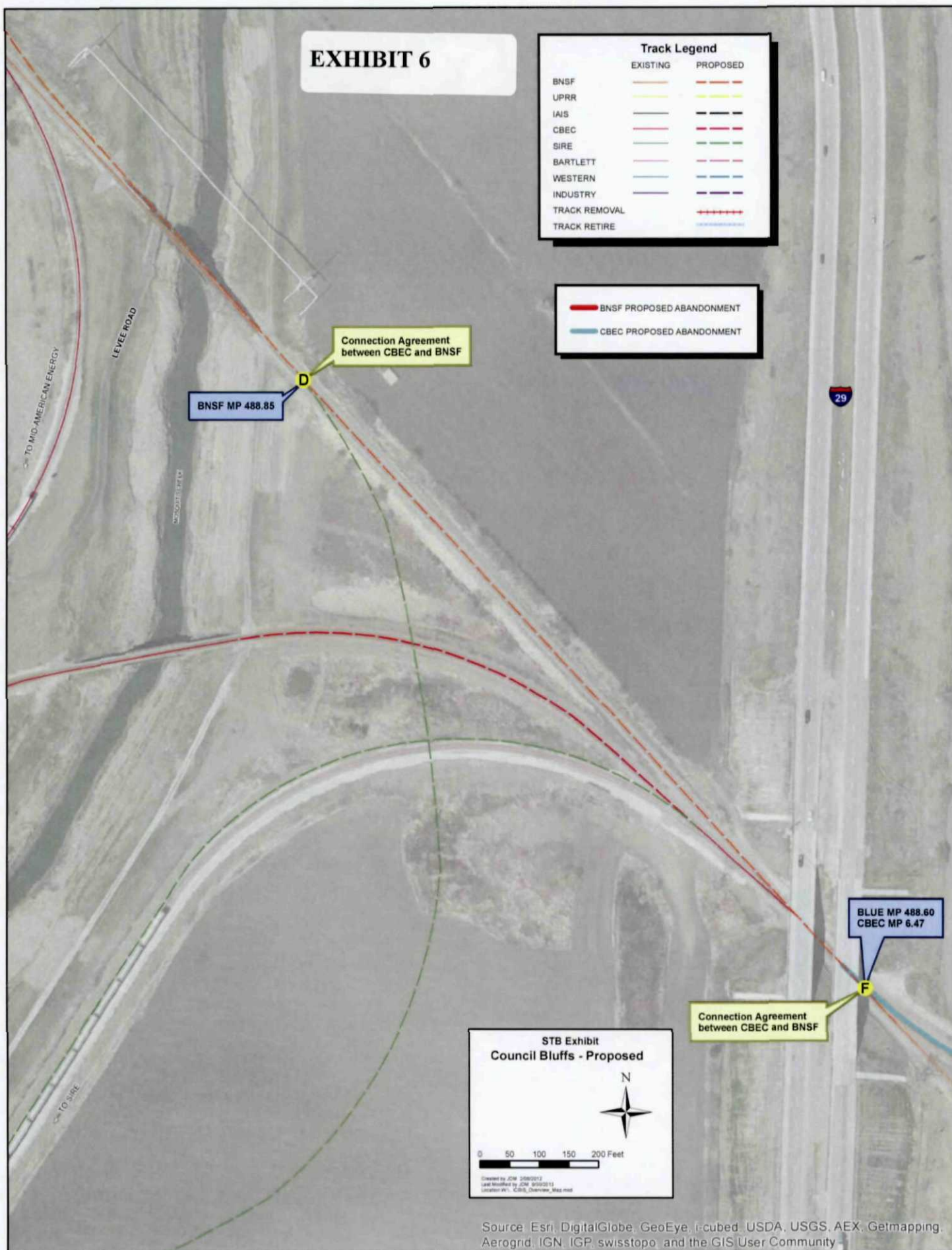


EXHIBIT 7

MASTER AGREEMENT
between
IOWA DEPARTMENT OF TRANSPORTATION
and
BNSF RAILWAY COMPANY

Covering

Rail Line Relocation and Modification

Pursuant to Reconstruction of Interstate Highways 29 and 80, U.S. Highway 275,

and Iowa Highways 92 and 192

Pottawattamie County, Iowa

On Council Bluffs — Pacific Junction Subdivision

From Approximate MP 488.60 (FRA 074401E @ I29) to MP 492.63 (FRA 084110S @ 9th St.)

On Council Bluffs — Bayard Subdivision

From MP 480.60 (FRA 378235G @ Valley View Drive) to MP 483.6 (FRA 084103G Just

South of 16th Avenue)

Council Bluffs, Iowa

Project IMN-80-1(366)4-0E-78

Rail Relocation

Pottawattamie County

. AGREEMENT

THIS AGREEMENT, is made and entered into by and between the Iowa Department of Transportation, acting for the State of Iowa, hereinafter called the DOT, and BNSF Railway Company, a Delaware corporation, with principal offices located at 2650 Lou Menk Dr 2nd Floor, P O. Box 961057, Fort Worth, TX 76131-0057, Phone (817) 352-1000, hereinafter called **COMPANY**

Pursuant to a Memorandum of Understanding (MOU) entered into by the DOT and the **COMPANY** on August 6th, 2009, as extended by mutual agreement, the DOT plans to reconstruct and improve Interstate Highways 29 and 80, U.S Highway 275 and Iowa Highways 92 and 192 within the City of Council Bluffs, Pottawattamie County, Iowa. The parties have agreed that to best facilitate this project, it is necessary to relocate the **COMPANY** mainline, and modify several railroad interconnections. The highway reconstruction and improvements and the relocation of **COMPANY**'s railroad facilities are hereinafter referred to collectively as the "Project"

The MOU called for the creation of definitive agreements to carry out the Project. This Master Agreement provides for additional definitive agreements. In addition to this Master Agreement, the DOT and the **COMPANY** have also entered into, (i) a Construction & Maintenance Agreement ("C&M Agreement"), (ii) a Real Estate Transfer Agreement ("RETA") with the City of Council Bluffs (the "City"), Iowa Interstate Railroad ("IAIS") and CBEC Railway, Inc. ("CBEC") and (iii) a Yard Real Estate Transfer Agreement ("Yard RETA") with the City and IAIS

Briefly outlined, this Project will relocate, modify or alter **COMPANY** facilities as follows.

- Relocate the **COMPANY**'s mainline between just North of the underpass with I 29 and 9th Street in downtown Council Bluffs
- Cause the **COMPANY** to transfer ownership in the Council Bluffs yard currently located between just South of 32nd Avenue to the area immediately North of

relocated 23rd Avenue.

COMPANY right of way is required for the highway reconstruction and improvements (collectively, "Highway Improvements") portion of this Project, and additional right of way will be transferred to the COMPANY by the State of Iowa, the City, IAIS or CBEC in permanent easement or fee title as requested by COMPANY and as acceptable to COMPANY, as necessary to accomplish the rail line relocation contemplated in this Project. The property exchanges necessary for the Project are more particularly described in the RETA and Yard RETA.

DOT acknowledges that COMPANY's existing railroad facilities are essential to COMPANY's railroad operations. Prior to COMPANY's discontinuing operations on COMPANY's existing railroad facilities, COMPANY must have fully operational replacements for such existing railroad facilities, including without limitation power, water and other utilities as needed or desirable to operate such replacements (collectively with such utilities, referred to hereinafter as the "Rail Relocation Improvements"), in place on property owned or controlled by COMPANY (the "Replacement Property"), with portions of such Replacement Property being transferred to COMPANY from DOT, the City, CBEC and IAIS at the Closing under the RETA. In consideration thereof and as further described in the C&M Agreement, COMPANY agrees, pursuant to the Lump Sum Payment, to construct the Rail Relocation Improvements (other than certain "Reimbursable Work", which Reimbursable Work will be constructed or otherwise performed by COMPANY or its contractor as set forth in the C&M Agreement), on the Replacement Property.

The preliminary plans and specifications for the Rail Relocation Improvements under rail relocation project IMN-80- 1(366)4-0E-78 are attached as Exhibit A, and by this reference incorporated into this Agreement, provided, however, the grade-crossing warning signal system at 8th Street will be designed by COMPANY, and any grade-crossing signal system design in Exhibit A is void. The preliminary plans and specifications are subject to finalization as set forth in the C&M Agreement. Also as more particularly set forth in the C&M Agreement, preliminary plans for the Highway Improvements to be constructed by the DOT which are over, above, or may potentially impact COMPANY operations and/or the Rail Relocation

Improvements will be submitted for review by and approval of the COMPANY in accordance with the provisions of the C&M Agreement prior to any letting by the DOT for construction of such Highway Improvements. As COMPANY is provided future plans for review and approval, COMPANY should not revisit approval of previous versions of Project plans without notice and consultation with DOT

A graphic description of right of way to be acquired and transferred and assignment of construction, maintenance and operation responsibilities for the Highway Improvements and the Rail Relocation Improvements is attached as Exhibit B and by this reference incorporated into this Agreement.

IN CONSIDERATION of the foregoing and the mutual promises contained herein, the parties agree as follows.

1. RIGHT OF WAY

A The DOT shall purchase and acquire, for mutual benefit, in the name of the State of Iowa, all necessary right of way for the Rail Relocation Improvements, not otherwise transferred to COMPANY by the City of Council Bluffs or IAIS or CBEC. This right of way will be purchased in permanent easement or fee title, as requested by COMPANY, acceptable to COMPANY, and as authorized by law.

B. The transfers of right of way necessary for the Rail Relocation Improvements and construction of the Highway Improvements are described in the executed RETA which is attached as Exhibit C and by this reference incorporated into this Agreement.

C. The transfer of the Council Bluffs yard is described in the executed Yard RETA which is attached as Exhibit D and by this reference incorporated into this Agreement.

D. Absent this Agreement, the DOT may exercise its authority to institute and maintain eminent domain proceedings against COMPANY

2. CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS

The obligations of both DOT and the COMPANY to either provide for or perform the design, award, construction, and maintenance of the improvements are described in the C&M Agreement to be executed contemporaneously with this Agreement which provides as follows:

- for the grading and drainage work necessary for the Rail Relocation Improvements by DOT, at DOT's expense, on the Replacement Property
- for the construction of the track and roadway crossings necessary for the Rail Relocation Improvements by COMPANY, as part of the Lump Sum Payment, on the Replacement Property
- for the construction of the Highway Improvements by DOT, at DOT's expense, on COMPANY right of way
- for the performance of the Reimbursable Work by COMPANY, at DOT's expense

3. PAYMENT OF LUMP SUM

A. The DOT will pay COMPANY a lump sum of \$14,600,000 (Fourteen Million Six Hundred Thousand and No/100 Dollars) for COMPANY's review of right of way to be transferred from the DOT, for completion of the railroad relocation project, and for any other costs not explicitly excluded in the C&M Agreement payable in phases at key milestones as follows.

- \$6,200,000 upon expiration of COMPANY's rights to cancel as described in Paragraph 4 of this Master Agreement, absent termination by any party prior to November 30, 2013
- \$6,200,000 upon COMPANY's commencement of construction of the Rail Relocation Improvements
- \$2,200,000 upon COMPANY's completion of construction of the Rail Relocation Improvements and transfer of COMPANY's remaining property interests as described in the Real Estate Transfer Agreement (Exhibit C) and the Yard Real Estate Transfer Agreement (Exhibit D)

B. The DOT will pay COMPANY a lump sum of \$5,800,000.00 (Five Million Eight Hundred Thousand and No/100 Dollars) for COMPANY's lost capacity in the Council Bluffs yard, payable at the closing of the transactions contemplated in the Yard Real Estate Transfer Agreement which is attached as Exhibit D

4. CONTINGENCIES/TERMINATION

A. **Project Agreements.** The obligations of the DOT and the COMPANY under this Master Agreement are contingent upon the full execution of the following additional agreements (together with this Master Agreement and the C&M Agreement, collectively referred to as the "Project Agreements"), contemporaneously with this Master Agreement :

- A Master Agreement and a Construction & Maintenance agreement between the DOT and the IAIS
- A Master Agreement and a Construction & Maintenance agreement between the DOT and the CBEC
- A Construction & Maintenance Agreement between the DOT and Southwest Iowa Renewable Energy (SIRE)
- A Yard Real Estate Transfer Agreement between DOT, COMPANY, IAIS and City of Council Bluffs
- An agreement for track relocation and reconstruction between CBEC and SIRE
- A Real Estate Transfer Agreement between DOT, COMPANY, City of Council Bluffs, IAIS and CBEC
- Letters of Understanding regarding joint facility agreements between or among COMPANY, CBEC and IAIS

B. **Contingencies** The obligations of the DOT and COMPANY under this Master Agreement are also contingent upon completion of the following by November 30, 2013:

- Approval by the Surface Transportation Board of the Rail Relocation Improvements and the transfer of freight service from COMPANY to IAIS.
- All Project Agreements have been executed, are in full force and effect, and have not been terminated by any party.
- All necessary joint facilities agreements between or among COMPANY, CBEC and IAIS

have been executed, are in full force and effect, and have not been terminated by any party.

If any of the above contingencies has not been satisfied by November 30, 2013, either party may elect to terminate this Agreement and neither DOT nor COMPANY shall have any rights or obligations under this Agreement except for those rights and obligations that expressly survive termination of this Agreement

5. CHANGES TO THE AGREEMENT

This Agreement with attachments and the C&M Agreement with attachments constitute the entire Agreement between the DOT and the COMPANY concerning this Project. Representations made before the signing of this Agreement are not binding, and neither party has relied upon conflicting prior representations in entering into this Agreement. Any change or alteration to the terms of this Agreement must be made in the form of a written Addendum to this Agreement. Said Addendum shall become effective only upon the written approval of the DOT and the COMPANY.

6. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the successors and assigns of the COMPANY and the DOT

7. AGREEMENT UNDER IOWA LAW

This Agreement is made under and shall be construed according to the laws of the State of Iowa.

8. ORIGINAL AGREEMENT COUNTERPARTS

This Agreement may be executed and delivered in counterparts, each of which so executed and delivered, shall be deemed to be an original, and shall constitute but one and the same instrument

9. DEFAULT AND REMEDIES

A. If either Party fails to perform any of its obligations under this Agreement (a

"Default"), and, after written notice is given by the non-defaulting Party to the defaulting Party specifying the Default, the defaulting Party fails either to promptly commence to cure the Default, or to complete the cure expeditiously but in all events to complete the cure within thirty (30) days after the default notice is given, then the non-defaulting Party may seek specific performance of the unperformed obligations or bring a claim for damages. The 30 day period after the default notice may be extended by mutual agreement of the Parties.

B. The DOT may pursue equitable remedies (including without limitation self-help and the right to compel specific performance) in the enforcement of its agreements with other parties and may enforce its rights under such agreements as necessary so that COMPANY can complete its construction of the Rail Relocation Improvements

C. Any waiver by a Party of any Default or Defaults of the other Party shall not constitute a waiver for any subsequent Default or Defaults.

10. NO WAIVER OF PREEMPTION OR SOVEREIGN IMMUNITY

Nothing in this Agreement shall be deemed a submission by COMPANY to the jurisdiction of any state or local body or a waiver of the preemptive effect of any state or federal law. Nothing in this Agreement should be deemed a submission by the DOT to the jurisdiction of the Federal Court or a waiver or extension of its sovereign or Eleventh Amendment immunities.

11. GOOD FAITH COOPERATION

Each Party will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such reasonable further confirmations, instruments, or further assurances and consents as may be reasonably necessary or proper in order to effectuate the covenants and agreements herein provided Each Party shall reasonably cooperate in good faith with the other and shall do any and all other acts and execute, acknowledge, and deliver any and all documents so reasonably requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

12. NO THIRD PARTY BENEFICIARIES

This Agreement is between COMPANY and DOT and is not intended to create any rights in any third person or persons

13. SUNSET

If no action has been taken to transfer property to COMPANY under the provisions of the RETA (Exhibit C to this Agreement) or under the Yard RETA (Exhibit D to this Agreement) and no construction contracts have been awarded and no substantial capital investment has been made toward the construction of the project by the DOT by April 1, 2023, this Agreement, the C&M Agreement, RETA, Yard RETA and all related agreements and any rights under these agreements shall terminate

/Signature page and exhibits follow/

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by their authorized officers thereunto duly authorized as of the dates below indicated

Executed by the COMPANY this BNSF RAILWAY COMPANY

7th day of May, 2013 By Dean Wise
Dean Wise
Vice President, Network Strategy

Executed by the DOT this STATE OF IOWA
Iowa Department of Transportation

10th day of May, 2013 By Troy A. Jerman
Troy A. Jerman, P.E.
District 4 Engineer

RECEIVED
MAY 10 2013
OFFICE OF RAIL
TRANSPORTATION

EXHIBIT A
RAILROAD RELOCATION PLANS

EXHIBIT B
GRAPHIC DESCRIPTION OF RIGHT OF WAY TO BE ACQUIRED AND
TRANSFERRED AND ASSIGNMENT OF CONSTRUCTION, MAINTENANCE AND
OPERATION RESPONSIBILITIES

EXHIBIT C
REAL ESTATE TRANSFER AGREEMENT

EXHIBIT D
YARD REAL ESTATE TRANSFER AGREEMENT

EXHIBIT 8

MASTER AGREEMENT
between
IOWA DEPARTMENT OF TRANSPORTATION
and
CBEC RAILWAY INC
Covering
Rail Line Relocation and Modification
Pursuant to Reconstruction of Interstate Highways 29 and 80,
U.S Highway 275 and Iowa Highways 92 and 192
Pottawattamie County, Iowa
Council Bluffs, Iowa

Project IMN-80-1(366)4--0E-78 Rail Relocation Pottawattamie County

AGREEMENT

THIS AGREEMENT, is made and entered into by and between the Iowa Department of Transportation, acting for the State of Iowa, hereinafter called the DOT, and CBEC Railway Inc., an Iowa corporation, with principal offices located at 2600 Grand Avenue, Suite 410, Des Moines, Iowa, hereinafter called COMPANY.

The DOT plans to reconstruct and improve Interstate Highways 29 and 80, U.S. Highway 275, and Iowa Highways 92 and 192 within the City of Council Bluffs, Pottawattamie County, Iowa. The parties have agreed that to best facilitate this project, it is necessary to relocate the COMPANY mainline and modify several railroad interconnections. The highway reconstruction and improvements and the relocation of COMPANY's railroad facilities are hereinafter referred to as "the Project."

Briefly outlined, this Project will relocate, modify or alter COMPANY facilities as follows.

- Relocate the COMPANY mainline to stay on the west side of Mosquito Creek (the "Mainline Relocation")
- Cause the COMPANY to transfer all ownership in the portion of the right of way of the COMPANY's existing mainline that is to be relocated as part of the Project

COMPANY right of way is required for this Project and additional right of way will be transferred to the COMPANY by the State of Iowa in permanent easement or fee title as requested by COMPANY and as acceptable to COMPANY, as necessary to accomplish the rail line relocation contemplated in this Project.

The plans for rail relocation project IMN-80-1(366)4--0E-78 are attached as Exhibit A and by this reference incorporated into this Agreement. Preliminary plans for future portions of the Project to be constructed by the DOT which are over, above or may potentially impact COMPANY operations will be submitted for review by and approval of the COMPANY prior to any letting by the DOT for construction. As COMPANY is provided future plans for review and approval, COMPANY should not revisit approval of previous versions of Project plans without notice and consultation with DOT.

A graphic description of right of way to be acquired and transferred and assignment of construction, maintenance and operation responsibilities for the Mainline Relocation is attached

as Exhibit B and by this reference incorporated into this Agreement

IN CONSIDERATION of the foregoing and the mutual promises contained herein, the parties agree as follows

1. RIGHT OF WAY

The DOT shall purchase and acquire, for mutual benefit, in the name of the State of Iowa, all necessary right of way for the relocation of COMPANY's mainline. This right of way will be purchased in permanent easement or fee title, as requested by COMPANY, acceptable to COMPANY, and as authorized by law.

The transfers of right of way necessary for the Mainline Relocation and construction of the highway overpasses are described in the executed Real Estate Transfer Agreement which is attached as Exhibit C and by this reference incorporated into this Agreement.

The grading and other preliminary work to facilitate the relocation of COMPANY's mainline, as fully described in Exhibit A and which is to be performed by the DOT, shall be completed as outlined by the plans and the Construction & Maintenance Agreement to be executed by the parties contemporaneously with this Agreement. Upon the completion of this work and satisfaction of other required conditions, the right of way upon which the mainline relocation is located will then be transferred to the COMPANY via State Land Office Forms

The following events shall occur:

- A. The COMPANY shall convey right of way necessary for the Highway reconstruction and improvement on which existing railroad operations will temporarily remain, identified graphically in Exhibit B, via a quitclaim deed document in a form mutually agreeable to the parties
- B. The COMPANY shall convey right of way necessary for the Highway reconstruction and improvement on which railroad operations will remain, identified graphically in Exhibit B, via a permanent easement in a form mutually agreeable to the parties.
- C. The COMPANY shall transfer the necessary temporary easements to DOT which shall

be assignable to DOT's contractor for improvements to new track to be owned by Southwest Iowa Renewable Energy ("SIRE") on COMPANY right of way. COMPANY shall transfer the necessary easements to SIRE, consistent with existing COMPANY easements with SIRE for operation of the new track to be owned by SIRE.

- D. Upon completion of the DOT-constructed improvements necessary for the relocation of COMPANY's mainline, the State of Iowa shall transfer to the COMPANY via State Land Office Forms the land necessary to operate and maintain COMPANY's relocated mainline as identified in Exhibit A. The areas to be transferred are identified generally in Exhibit B and will be more specifically legally described via survey plat as described in Exhibit C. The transfer document shall be upon a form mutually agreeable to the parties.
- E. After the DOT has constructed the track and signal improvements necessary for the mainline relocation and other relocations as identified in Exhibit A and approval and acceptance thereof by COMPANY, COMPANY shall relocate its rail traffic.
- F. The COMPANY shall transfer via quitclaim deed to the DOT or the City of Council Bluffs, as designated by the DOT, the land upon which the former mainline track as identified in Exhibit B was located once regulatory approvals, if necessary, are completed. The COMPANY will grant access rights to BNSF Railway Company ("BNSF") on portions of the land to be transferred to the DOT or the City of Council Bluffs. The areas to be transferred are identified generally in Exhibit B and will be more specifically legally described via survey plat as described in Exhibit C. The transfer documents shall be upon a form mutually agreeable to the parties. The DOT or its assignee or the City of Council Bluffs may in addition elect to condemn the property in question to be transferred by the COMPANY so as to clear any title objections which may arise in the future. This is specifically contemplated for those areas which are determined to be held in permanent easement by the COMPANY. These areas to be transferred from the COMPANY to either the DOT or the City of Council Bluffs, as designated by DOT, shall be transferred in an "as is" condition with no warranties of title. Any track materials or infrastructure remaining upon the land at the time of transfer shall be deemed abandoned by the COMPANY and no credit for salvage shall be

provided nor required. If any salvage occurs prior to transfer, salvage shall occur in compliance with the Construction & Maintenance Agreement.

DOT and COMPANY shall arrange for the transfers provided in paragraphs A-F above by the mutual exchange of conveyance documents and related closing documents

2. CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS

The obligations of both DOT and the COMPANY to either provide for or perform the design, award, construction, and maintenance of the improvements will be described in the Construction & Maintenance Agreement which will provide as follows

- for the construction of the new highway overpass(es) by DOT on COMPANY right of way
- for the construction of new and modified railroad infrastructure by the DOT

3. CONTINGENCIES/TERMINATION

A. The obligations of the DOT and the COMPANY under this Master Agreement are contingent upon the execution of the following additional agreements contemporaneously with this Master Agreement:

- A Master Agreement and a Construction & Maintenance agreement between the DOT and the Iowa Interstate Railroad Company
- A Master Agreement and a Construction & Maintenance agreement between the DOT and the BNSF
- A Construction & Maintenance Agreement between the DOT and SIRE
- A Letter of Understanding pertaining to joint facilities agreements between COMPANY and BNSF

B The obligations of the DOT and COMPANY under this Master Agreement are also contingent upon completion of the following by November 30, 2013:

- Approval by the Surface Transportation Board of the rail relocation project and the transfer of freight service from BNSF to IAIS

- Joint facilities agreements between COMPANY and BNSF

If these contingencies have not occurred by November 30, 2013, any party may elect to terminate this Agreement and neither DOT nor COMPANY shall have any rights or obligations under this Agreement except for those rights and obligations that expressly survive termination of this Agreement.

If BNSF, IAIS or SIRE elects to terminate its Agreement with DOT, DOT may elect to terminate this Agreement.

If DOT or COMPANY terminates the Real Estate Transfer Agreement (Exhibit C), this Agreement shall be automatically terminated and neither DOT nor COMPANY shall have any rights or obligations under this Agreement except for those rights and obligations that expressly survive termination of this Agreement.

Before either DOT or COMPANY shall exercise any right to terminate this Agreement, 30 days' notice shall be given. Following any such termination, neither DOT nor COMPANY shall have any rights or obligations under this Agreement except for those rights and obligations that expressly survive termination of this Agreement

4. CHANGES TO THE AGREEMENT

This Agreement with attachments and the Construction & Maintenance Agreement constitute the entire Agreement between the DOT and the COMPANY concerning this Project. Representations made before the signing of this Agreement are not binding, and neither party has relied upon conflicting prior representations in entering into this Agreement. Any change or alteration to the terms of this Agreement must be made in the form of a written Addendum to this Agreement. Said Addendum shall become effective only upon the written approval of the DOT and the COMPANY.

5. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the successors and assigns of the COMPANY and the DOT

6. AGREEMENT UNDER IOWA LAW

This Agreement is made under and shall be construed according to the laws of the State of Iowa.

7. ORIGINAL AGREEMENT COUNTERPARTS

This Agreement may be executed and delivered in counterparts, each of which so executed and delivered, shall be deemed to be an original, and shall constitute but one and the same instrument.

8. NO THIRD PARTY BENEFICIARIES

- This Agreement is between COMPANY and DOT and is not intended to create any rights in any third person or persons.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by their authorized officers thereunto duly authorized as of the dates below indicated.

Executed by the COMPANY this

CBEC RAILWAY INC.

12 day of APRIL, 2013

By Richard J. Anderson
Richard Anderson
Vice President of Operations

Executed by the DOT this

STATE OF IOWA

Iowa Department of Transportation

10th day of May, 2013

By Troy Jerman
Troy Jerman, P.E.
District 4 Engineer

RECEIVED
APR 16 2013
OFFICE OF RAIL
TRANSPORTATION

8

EXHIBIT A

RAIL RELOCATION PLANS

(This exhibit will consist of the DS plans created in June, 2011 and the addenda sheets previously approved by COMPANY for connection track between IAIS and CBEC and BNSF Council Bluffs Subdivision approximately located between 14th Avenue and South 7th Street, and 11th Avenue and South 6th Street.)

EXHIBIT B

**GRAPHIC DESCRIPTION OF RIGHT OF WAY TO BE ACQUIRED AND
TRANSFERRED AND ASSIGNMENT OF CONSTRUCTION, MAINTENANCE AND
OPERATION RESPONSIBILITIES**

EXHIBIT C
REAL ESTATE TRANSFER AGREEMENT

EXHIBIT 9



Richard Ebel
Assistant Vice President
Shortline Development

BNSF Railway Company
2500 Lou Menk Dr.
Fort Worth, TX
Ph 817-887 2270
Fax 817-352-7154
Email Richard.ebel@bnsf.com

August 28, 2013

Richard L. Anderson
CBEC Railway Inc.
P.O. Box 2517
Cedar Rapids, Iowa 52406-2517

Dear Richard:

This letter concerns a proposed transaction between BNSF Railway Company ("BNSF") and CBEC Railway Inc. ("CBEC") as part of both railroads' accommodation of the Iowa Department of Transportation's ("IaDOT") project to reconstruct the interchange of I-80 and I-29 in Council Bluffs, IA ("Project").

This letter of understanding is provided to facilitate further discussion and negotiation and is not a commitment or guarantee that the terms or transactions contemplated herein shall be completed. Completion of the terms or the transactions outlined in this letter of understanding is subject to (i) the IaDOT obtaining all necessary approvals and complete funding for the Project, (ii) further negotiations to the satisfaction of both CBEC and BNSF, and (iii) execution of a mutually satisfactory agreement.

This letter of understanding is not intended to be all-inclusive but rather an outline of some of the terms or transactions necessary to facilitate CBEC and BNSF cooperation in the development of the Project. The final agreement necessary to complete the terms or transactions set forth herein may cover additional matters not addressed by this letter of understanding and may, after further negotiations, reflect changes to the terms summarized below.

Subject to the aforementioned contingencies and recognizing that further negotiations between CBEC and BNSF will be required, the parties will proceed to assist with the Project as follows

- 1 A new agreement for two additional proposed connections between BNSF / CBEC immediately northwest of CBEC Junction.

Purpose: IaDOT proposed to have constructed at IaDOT's sole expense two new connections at designated locations from CBEC trackage to BNSF's mainline for alternative access to Southwest Iowa Renewable Energy (or any successor entity at the same facility or location) (collectively "SIRE") over CBEC and BNSF tracks. Both connections lie northwest of the existing CBEC Junction as depicted on Exhibit A attached to this letter at point B: New Connection from CBEC to SIRE - North and point C: New Connection from CBEC to SIRE - South. These new CBEC connections are intended to preserve CBEC's access to the SIRE lead and will be used only for traffic specified in Section 4 of this letter agreement.

BNSF / CBEC propose the following terms for these new connections:

- The new connection at point B will consist of one (1) rail switch on CBEC and one (1) rail switch on BNSF. Each party shall own, maintain, repair and replace those portions of the rail switch and crossover track which are located on its property, at its sole cost and expense.
 - The new connection at point C will consist of one (1) rail switch on BNSF and BNSF shall maintain, repair and replace the rail switch at the sole cost and expense of CBEC either on an actual cost basis or on agreed upon annual flat rate.
 - BNSF shall control and direct all train movements over the connections subject to a dispatch protocol process providing BNSF trains priority over all other trains of the same type or class
- 2 An amended agreement for a connection between BNSF / CBEC along the new CBEC and BNSF corridor to be relocated from the existing right-hand turnout off the BNSF mainline.

Purpose: IaDOT proposed to have constructed at IaDOT's sole cost and expense a new connection from BNSF's mainline to CBEC's mainline at a designated location for alternative access to MidAmerican Energy Company's Walter Scott Jr. Energy Center (or any successor entity at the same facility or location) (collectively, "WSEC") over CBEC and BNSF tracks as depicted on Exhibit A at point A: New Connection from BNSF to WSEC - North. This relocated connection is intended to preserve BNSF's access to WSEC from the north and will be used only for traffic moving to or from WSEC specified in Section 5 of this letter agreement. As depicted on Exhibit A at point D: Existing Connection from BNSF to WSEC - South the current northwest-bound left-hand rail switch turnout off the BNSF's mainline at CBEC Junction will not be removed.

BNSF / CBEC propose the following terms for this new connection:

- The new connection at point A will consist of one (1) rail switch on CBEC and one (1) rail switch on BNSF. Each party shall own, maintain, repair and replace those portions of the rail switch and crossover track which are located on its property, at its sole cost and expense.

- BNSF operations over the connection shall be mutually agreed to by the parties and consistent with customary dispatching procedures, including any existing dispatching protocols or handling agreements in place.

3 Crossing Agreement for BNSF / CBEC.

Purpose: Main line relocations, as proposed by IaDOT, require the installation of a new at-grade crossing between BNSF and CBEC as depicted on Exhibit A at point F. CBEC's mainline crossing of BNSF's trackage is proposed to be located immediately west of the current turnout of the northwest leg of the BNSF / CBEC wye as depicted on Exhibit A at point F: New Crossing where CBEC crosses BNSF. This crossing would consist of the installation of a new at-grade diamond. When the Project is completed, the BNSF trackage at this location will be used to serve a BNSF customer(s) in Council Bluffs on an as-needed basis

In light of anticipated railroad usage of the Crossing following completion of the Project, BNSF / CBEC propose the following terms for this new crossing at point F:

- Train movements over the crossing shall be governed on a first-come first-served basis with the appropriate rules and notifications governing. Neither CBEC or its agent, contract operator, or tenant nor BNSF shall stop or park any train on the crossing diamond with the exception of an emergency situation preventing the safe movement of a train.
- BNSF shall maintain the crossing diamond at the sole cost and expense of CBEC
- Should BNSF discontinue use of the BNSF industrial spur through abandonment proceedings at some future date, CBEC will have the right, but not the obligation, to notify BNSF that CBEC desires to retain its ability to cross BNSF right of way at this location with CBEC trackage, and following receipt of such notice BNSF shall transfer to CBEC, at reasonable and customary compensation, BNSF's assignable interests in the right of way at that location and otherwise reasonably cooperate with CBEC to help CBEC preserve its ability to cross

CBEC will also have the option to install at a later date an additional crossing of BNSF's trackage immediately west of the at-grade diamond discussed above, at point G. This additional crossing would consist of the installation of an additional new diamond.

BNSF / CBEC propose the following terms for this new additional crossing.

- Should CBEC decide that an additional crossing diamond across BNSF trackage is needed, CBEC shall obtain BNSF written approval, which shall not be unreasonably withheld. The cost of installing the additional crossing diamond shall be at the sole cost and expense of CBEC.
- Train movements over the Crossing shall be governed on a first-come first-served basis with the appropriate rules and notifications governing. Neither CBEC or its agent, contract operator, or tenant, nor BNSF shall stop or park any train on the future

additional crossing diamond with the exception of an emergency situation preventing the safe movement of a train.

- BNSF shall maintain this future additional crossing diamond at the sole cost and expense of CBEC
- Should BNSF discontinue use of the industrial spur through abandonment proceedings at some future date, CBEC will have the right, but not the obligation, to notify BNSF that CBEC desires to retain its ability to cross BNSF right of way at this location with CBEC trackage, and following receipt of such notice BNSF shall transfer to CBEC, at reasonable and customary compensation, BNSF's assignable interests in the right of way at that location and otherwise reasonably cooperate with CBEC to help CBEC preserve its ability to cross.

4. BNSF grant of limited overhead trackage rights to CBEC.

Purpose The main line relocations proposed by IdDOT will result in CBEC requiring approximately 1,500 feet of trackage rights over BNSF's main line to maintain all of its current railroad access to the SIRE lead track. BNSF will grant to CBEC trackage rights between points B and C on Exhibit A.

BNSF / CBEC propose for BNSF to grant limited overhead trackage rights to CBEC under the following terms:

- Limited overhead trackage rights only shall be granted to CBEC for the sole purpose of moving the traffic of CBEC's current customers (SIRE and WSEC) between CBEC's main line and the SIRE lead track. If, in the future, CBEC desires to move traffic over BNSF's main line other than or in addition to traffic of CBEC's current customers (SIRE and WSEC), CBEC shall obtain written approval from BNSF. BNSF shall not be unreasonably withhold, condition or delay its approval; provided, however, BNSF shall reserve the right to review the projected volumes to ensure sufficient infrastructure exists on BNSF's main line to handle CBEC's then proposed traffic volumes while at all times ensuring that BNSF train operations are not adversely impacted. In the event BNSF reasonably determines additional infrastructure is necessary for such projected increased traffic volume, CBEC shall be entitled to handle such traffic upon assuming responsibility for the cost and expense of such improvements.
- The governing agreement would be in a form satisfactory to BNSF and CBEC and would be substantially similar to the governing agreement for trackage rights contemplated in Section 5 below.
- The parties agree that CBEC or its agent or contract operator shall not have the right to operate any trains containing commodities classified as Rail Security-Sensitive Materials (as such term is defined in 49 CFR Part 1580, as amended, supplemented or replaced) over BNSF trackage without the prior written consent and agreement of BNSF. In the event CBEC or its agent have been operating trains containing

commodities over BNSF trackage that are subsequently classified as Rail Security-Sensitive Material, then BNSF and CBEC shall immediately begin good faith negotiations to adjust the provisions of this letter or future trackage rights agreement governing this rail movement to address the costs and changes in operations needed for the transportation of the classified commodities to be in compliance with Rail Security-Sensitive Material rules and regulations. During such negotiations, BNSF shall continue to allow CBEC to transport such materials provided such transportation complies with the then effective regulations applicable to Rail Security Sensitive Material.

- The assignment or subletting of CBEC's rights to an agent or contract operator for the purpose of providing rail carrier operations over BNSF's main line shall be contingent upon BNSF's written consent now and in the future for the term of this trackage rights, however, this consent shall not be unreasonably withheld, conditioned or delayed. BNSF acknowledges and consents to Iowa Interstate Railroad, Ltd. as the current contract operator for CBEC.
- CBEC, or its agent or contract operator, shall not have the right to conduct any passenger service on the BNSF main line.
- CBEC, or its agent or contract operator, shall not have the right to make any other or future connections to the BNSF main line other than those for the purpose of implementing these rights unless specifically granted by BNSF in writing.
- Compensation for these trackage rights granted to CBEC will be based on either a per car fee or an equivalent flat rate on a monthly or annual basis subject to escalation, all subject to mutual agreement of BNSF and CBEC. Proceeds from this fee would go toward the additional maintenance and upkeep of that portion of BNSF line upon which trackage rights are proposed to accommodate traffic to / from the SIRE lead track
- BNSF shall control and direct all train movements over the BNSF main line subject to a dispatch protocol process providing BNSF trains priority over all other trains of the same type or class
- CBEC, or its agent or contract operator, will be required to indemnify BNSF for any loss, damage, injury, and/or death of any party that may occur during or as a result of operating over BNSF's main line. Notwithstanding the foregoing, no such indemnification shall be provided by CBEC, or its agent, or contract operator to the extent of any gross negligence, fraudulent or illegal acts or acts of willful misconduct of BNSF in connection with the loss, damage, injury, and/or death. CBEC, or its agent, or contract operator would also be required to carry sufficient insurance (minimum \$25 million per occurrence) to cover any such loss, damage, injury and /or death.
- CBEC, or its agent or contract operator, shall be required to secure authority of a clear route to directly enter upon CBEC trackage to and/or from SIRE lead track prior to entering BNSF's main line. CBEC or its agent, or contract operator shall not stop

or park any train on BNSF's main line with the exception of an emergency situation preventing the safe movement of a train.

5. CBEC grant of limited overhead trackage rights to BNSF.

Purpose: The main line relocations proposed by IaDOT will result in BNSF requiring trackage rights over CBEC's main line to maintain all of its current railroad access for delivery of coal to WSEC from the connections located at points A and D. CBEC will grant to BNSF trackage rights between points A and E and between points D and E on Exhibit A.

BNSF / CBEC propose for CBEC to grant limited overhead trackage rights to BNSF under the following terms:

- Limited overhead trackage rights only shall be granted to BNSF for the sole purpose of moving coal traffic of BNSF's current customer (WSEC) between BNSF's main line and the WSEC lead track from either the north or the south.
- The governing agreement would be in a form satisfactory to BNSF and CBEC and would be substantially similar to the governing agreement for trackage rights contemplated in Section 4 above.
- The assignment or subletting of BNSF's rights to an agent or contract operator for the purpose of providing rail carrier operations over CBEC's main line shall be contingent upon CBEC's written consent now and in the future for the term of this trackage rights, however, this consent shall not be unreasonably withheld, conditioned or delayed.
- BNSF, or its agent or contract operator, shall not have the right to conduct any passenger service on the CBEC main line.
- BNSF, or its agent or contract operator, shall not have the right to make any other or future connections to the CBEC main line other than those for the purpose of implementing these rights unless specifically granted by CBEC in writing.
- CBEC will maintain dispatching control over CBEC's main line. BNSF operations over CBEC trackage shall be mutually agreed to by the parties and consistent with customary dispatching procedures, including any existing dispatching protocols or handling agreements in place.
- BNSF, or its agent or contract operator, will be required to indemnify CBEC for any loss, damage, injury, and/or death of any party that may occur during or as a result of operating over CBEC's main line. Notwithstanding the foregoing, no such indemnification shall be provided by BNSF, or its agent, or contract operator to the extent of any gross negligence, fraudulent or illegal acts or acts of willful misconduct of CBEC in connection with the loss, damage, injury, and/or death. BNSF, or its agent, or contract operator would also be required to carry sufficient insurance (minimum \$25 million per occurrence) to cover any such loss, damage, injury and /or

death BNSF and CBEC acknowledge that BNSF is self-insured for liability and property. This self-insurance will respond to the extent of the indemnity obligations provided in this section.

6. No Affect on Current Crossing Agreement.

This letter of understanding is not intended to make any changes to the current BNSF and CBEC Crossing Agreement dated November 9, 1995 covering the current crossing or movement of traffic through the existing crossing (including the southeast leg of the BNSF / CBEC wye) as depicted on Exhibit A at point D, which shall remain in effect at this time.

Please indicate your agreement and acceptance of the foregoing by signing and returning the duplicate copy of this letter.

Sincerely,



Richard Ebel
Assistant Vice President
Shortline Development

Agreed and Accepted:

By: Richard J. Anderson

Title: SENIOR V.P.

Date: 8-30-13

cc: Louie Ervin- CBEC Railway
Sarod Dhuru, Public-Private Partnerships - BNSF Railway

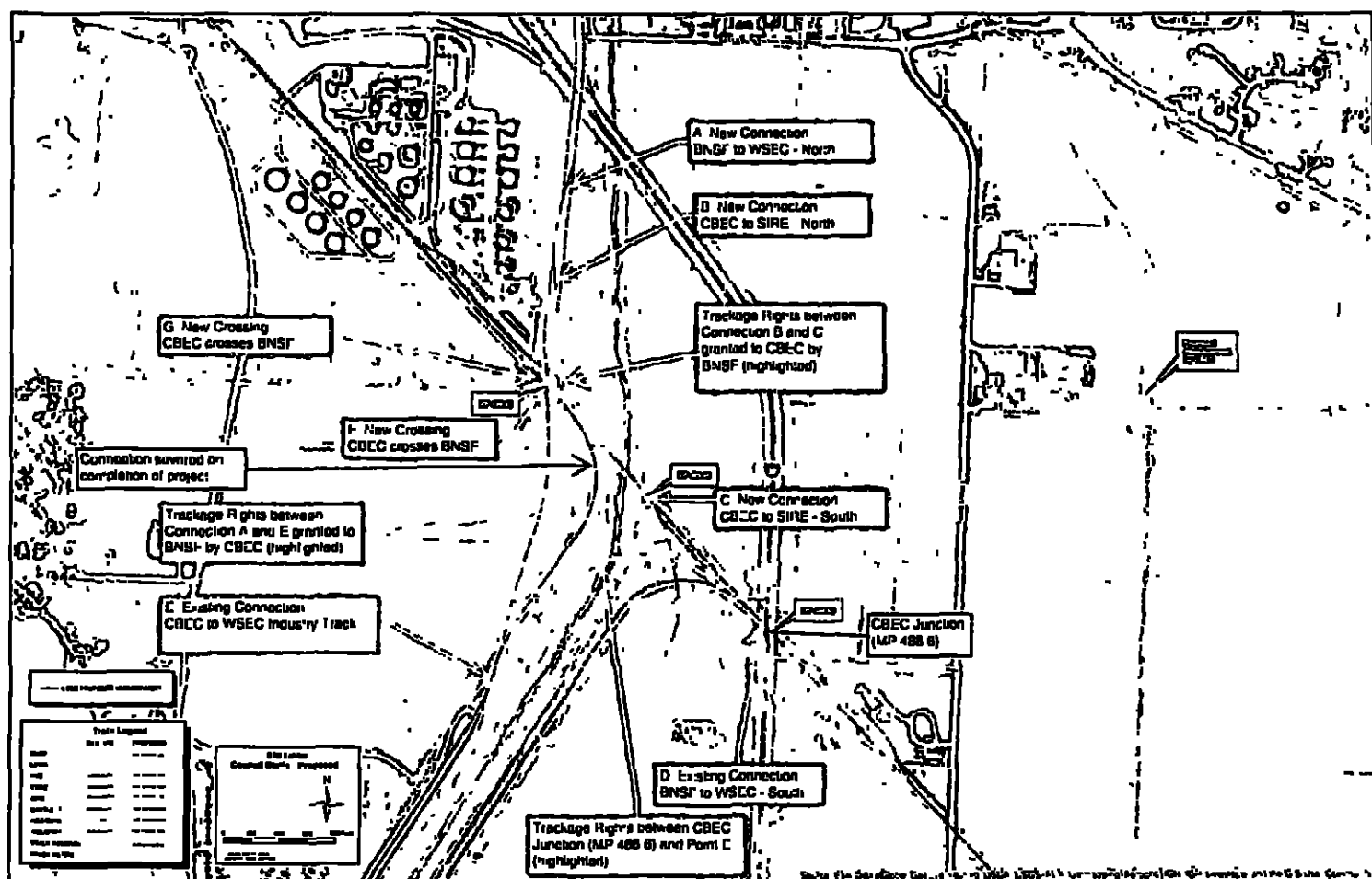


EXHIBIT 10

**MASTER AGREEMENT
between
IOWA DEPARTMENT OF TRANSPORTATION
and
IOWA INTERSTATE RAILROAD, LTD.**

Covering

Yard Tracks Relocation and Modification

**Pursuant to Reconstruction of Interstate Highways 29 and 80, U.S. Highway 275,
and Iowa Highways 92 and 192
Pottawattamie County, Iowa**

• Council Bluffs, Iowa

Project	IMN-80-1(366)4--0E-78	Rail Relocation	Pottawattamie County
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AGREEMENT

THIS AGREEMENT, is made and entered into by and between the Iowa Department of Transportation, acting for the State of Iowa, hereinafter called the DOT, and The Iowa Interstate Railroad, Ltd., a Delaware corporation, with principal offices located at 5900 6th Street SW, Cedar Rapids, Iowa hereinafter called COMPANY.

The DOT plans to reconstruct and improve the Interstate Highways 29 and 80, U.S. Highway 275, and Iowa Highways 92 and 192 within the City of Council Bluffs, Pottawattamie County, Iowa. The parties have agreed that to best facilitate this project, it is necessary to relocate the COMPANY yard tracks and modify several railroad interconnections.

Briefly outlined, this project will relocate, modify or alter COMPANY facilities as follows:

- Improvements to Council Bluffs yard and modification of connections
- Cause the COMPANY to transfer ownership in land necessary for relocation

COMPANY right of way is required for this project and additional right of way will be transferred to the COMPANY by the State of Iowa in permanent easement or fee title as necessary to accomplish the rail line relocation contemplated in this project

The plans for rail relocation project IMN-80-1(366)4--0E-78 are attached as Exhibit A, and by this reference incorporated to this Agreement. Preliminary plans for future projects to be constructed by the DOT which are over, above, or may potentially impact COMPANY operations will be submitted for review by and approval of the COMPANY prior to any letting by the DOT for construction. As COMPANY is provided future plans for review and approval, COMPANY should not revisit approval of previous versions of project plans without notice and consultation with DOT.

A graphic description of right of way to be acquired and transferred and assignment of construction, maintenance and operation responsibilities for the Yard Tracks Relocation and modification of connections is attached as Exhibit B and by this reference incorporated to this Agreement.

IN CONSIDERATION of the foregoing and the mutual promises contained herein, the parties agree as follows:

I. RIGHT OF WAY

A. The transfers of right of way necessary for the Yard Tracks Relocation and construction of the highway overpasses are described in the executed Real Estate Transfer Agreement which is attached as Exhibit C and by this reference incorporated into this Agreement and in the Yard Real Estate Transfer Agreement which is attached as Exhibit D and by this reference incorporated into this Agreement.

B. The grading and other preliminary work to facilitate the Yard Tracks Relocation, to be more fully described in Exhibit A, which is to be performed by the COMPANY, shall be completed as outlined by the plans and the Construction & Maintenance Agreement

C. COMPANY shall transfer right of way necessary for the Highway reconstruction and improvement on which existing railroad operations will remain and for the railroad relocation, identified graphically in Exhibit B and more particularly described in the executed Real Estate Transfer Agreement, which is attached as Exhibit C, via permanent easement or fee title documents in a form mutually agreeable to the parties. The COMPANY shall be compensated for the necessary right of way as described in the following table:

Parcel	Acreage	Compensation	Description
A-5	7.08	\$308,404.80	I-80 Easement
A-6	0.57	\$24,829.20	Pt. Yrd. Access
A-13	0.08	\$3,484.80	Excess
B-15	0.44	\$19,166.40	23 rd & 29 th Ave Jct
B-16	0.19	\$8,276.40	Pt. Yrd. Access
B-17	0.62	\$27,007.20	29 th Ave Turnaround
B-18	0.20	\$26,136.00	New on curve
B-19	0.57	\$74,487.60	Downtown Parcel
B-20	1.00	\$130,680.00	Downtown Parcel

C-7	5.35	\$233,046.00	BNSF Wye
C-8	0.67	\$87,555.60	BNSF Part of Downtown Parcel

D COMPANY shall transfer the necessary temporary easements to DOT which shall be assignable to DOT's contractor for improvements on COMPANY right of way. The areas to be transferred are identified generally in Exhibit B and are more specifically legally described via survey plats which are part of Exhibit C.

E. After COMPANY has constructed the track and signal improvements necessary for the Yard tracks line relocation and other relocations as identified in Exhibit A,

COMPANY shall relocate its rail traffic.

F. COMPANY shall transfer via quitclaim deed to the DOT or to the BNSF Railway or to the City of Council Bluffs, as designated by the DOT, the lands upon which those areas of former track are located as identified in Exhibit A. The areas to be transferred are identified generally in Exhibit B and are more specifically legally described via survey plat as described in Exhibit C. The transfer documents shall be upon a form mutually agreeable to all parties. The DOT or its assigns or the City of Council Bluffs may in addition elect to condemn the property in question to be transferred by the COMPANY so as to clear any title objections which may arise in the future. This is specifically contemplated for those areas which are determined to be held in permanent easement by the COMPANY. These areas to be transferred from the COMPANY to either the DOT or to the BNSF Railway or to the City of Council Bluffs, as designated by DOT, shall be transferred in an as is condition. Any track materials or infrastructure remaining upon the land at the time of transfer shall be deemed abandoned by the COMPANY and no credit for salvage shall be provided nor required. The COMPANY shall be compensated for lost capacity as follows:

1. For lost track: \$3,102,000
2. For interchange sidings: \$687,775
3. For loss of intermodal utility due to placement of bridge piers: \$1,008,000.

DOT and COMPANY shall arrange for the transfers provided in paragraphs A-F above by the mutual exchange of conveyance documents and related closing documents

2. CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS

The obligations of both DOT and the COMPANY to either provide for or perform the design, award, construction, and maintenance of the improvements will be described in a Construction & Maintenance Agreement to be executed contemporaneously with this Agreement which will provide as follows:

- for the construction of the new highway overpass(es) by DOT on COMPANY right of way
- for the construction of subballast grading by DOT on land to be acquired by DOT and on land owned by COMPANY
- for the construction of new railroad operations by the COMPANY pursuant to lump sum distributions.

3. CONTINGENCIES/TERMINATION

A The obligations of the DOT and the COMPANY under this Master Agreement are contingent upon the execution of the following additional agreements contemporaneously with this Master Agreement.

- A Master Agreement and a Construction & Maintenance agreement between the DOT and the CBEC Railway Company (CBEC)
- A Master Agreement and a Construction & Maintenance agreement between the DOT and the BNSF Railway Company (BNSF)
- A Construction & Maintenance Agreement between the DOT and Southwest Iowa Renewable Energy (SIRE)
- An agreement for the necessary land rights for track relocation between CBEC and SIRE
- A Letter of Understanding for all necessary joint facility improvements

B. The obligations of the DOT and COMPANY under this Master Agreement are also

contingent upon the completion of the following by November 30, 2013:

- Approval by the Surface Transportation Board of the rail relocation project and the transfer of freight service from BNSF to COMPANY
- Joint facility agreements

If these contingencies have not occurred by November 30, 2013, any party may elect to terminate this Agreement and neither DOT nor COMPANY shall have any rights or obligations under this Agreement except for those rights and obligations that expressly survive termination of this Agreement.

If BNSF or CBEC or SIRE elects to terminate its Master Agreement or Construction & Maintenance Agreement with DOT, DOT may elect to terminate this Agreement.

If DOT or COMPANY terminates the Real Estate Transfer Agreement (Exhibit C) or the Yard Real Estate Transfer Agreement (Exhibit D), this Agreement shall be automatically terminated and neither DOT nor COMPANY shall have any rights or obligations under this Agreement except for those rights and obligations that expressly survive termination of this Agreement.

4. CHANGES TO THE AGREEMENT

This Agreement with attachments and the Construction & Maintenance Agreement and Assurances, the Real Estate Transfer Agreement and the Yard Real Estate Transfer Agreement constitute the entire Agreement between the DOT, and the COMPANY concerning this rail line relocation project. Representations made before the signing of this Agreement are not binding, and neither party has relied upon conflicting prior representations in entering into this Agreement. Any significant change or alteration to the terms of this Agreement must be made in the form of a written Addendum to this Agreement. Said Addendum shall become effective only upon the written approval of the DOT, and the COMPANY.

5. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the successors and assigns of the COMPANY, and the DOT.

6. AGREEMENT UNDER IOWA LAW

This Agreement is made under and shall be construed according to the laws of the State of Iowa.

7. ORIGINAL AGREEMENT COUNTERPARTS

This Agreement may be executed and delivered in two or three counterparts, each of which so executed and delivered, shall be deemed to be an original, and shall constitute but one and the same instrument

8. NO THIRD PARTY BENEFICIARIES

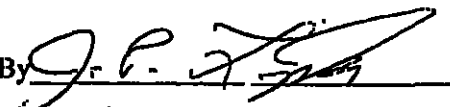
This Agreement is between COMPANY and DOT and is not intended to create any rights in any third person or persons.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by their authorized officers thereunto duly authorized as of the dates below indicated.

Executed by the COMPANY this

IOWA INTERSTATE RAILROAD LTD

24th day of APRIL, 2013

By 
J.P. Lipka

President and Chief Executive Officer

Executed by the DOT this

STATE OF IOWA

Iowa Department of Transportation

____ day of _____, 20____

By _____

Troy Jerman, P.E

District 4 Engineer

EXHIBIT A

RAIL RELOCATION PLANS

(This exhibit will consist of the D5 plans created in June, 2011 and the addenda sheets previously approved by COMPANY for connection track between IAIS and CBEC and BNSF Council Bluffs Subdivision approximately located between 14th Avenue and South 7th Street, and 11th Avenue and South 6th Street.)

EXHIBIT B

**GRAPHIC DESCRIPTION OF RIGHT OF WAY TO BE ACQUIRED AND
TRANSFERRED AND ASSIGNMENT OF CONSTRUCTION, MAINTENANCE AND
OPERATION RESPONSIBILITIES**

EXHIBIT C
REAL ESTATE TRANSFER AGREEMENT

EXHIBIT D
YARD REAL ESTATE TRANSFER AGREEMENT

VERIFICATION

STATE OF TEXAS

1

i

SS

COUNTY OF TARRANT

1

I, Aaron Hegeman, being duly sworn depose and state that I am Director, Public Private Partnerships of BNSF Railway Company, that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.


Aaron Hegeman

Aaron Hegeman

SUBSCRIBED AND SWORN TO before me this 30th day of September, 2013, in the County of Tarrant, State of Texas.

My Commission Expires: 3/5/16

Marla Ann Sibson
Notary Public



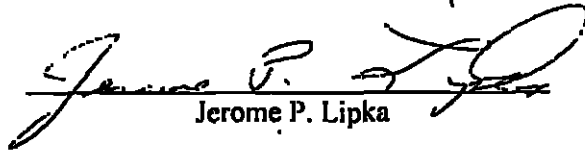
VERIFICATION

STATE OF IOWA)
)
COUNTY OF LINN)

ss.



Jerome P. Lipka, being duly sworn, deposes and says that he is President and Chief Executive Officer of Iowa Interstate Railroad, Ltd., that he has read the foregoing Notice of Exemption and knows the facts asserted therein as they relate to Iowa Interstate Railroad, Ltd , and that the same are true as stated to the best of his knowledge, information and belief.


Jerome P. Lipka

SUBSCRIBED AND SWORN TO
before me this 27 day
of September, 2013.


Notary Public

My Commission expires: 6/21/2016

VERIFICATION

Bryce B. Bump, being duly sworn, deposes and says that he is Senior Director Joint Facilities of Union Pacific Railroad Company, that he is authorized to make this verification, that he has read the foregoing Notice of Exemption and know the facts asserted therein as they relate to Union Pacific Railroad Company, and that the same are true and accurate as stated to the best of his knowledge, information, and belief.

Dated: September th~~30~~, 2013

B. B. Bump
Bryce B. Bump

SUBSCRIBED AND SWORN TO before me this th~~30~~ day of September, 2013, in the County of Douglas, State of Nebraska



My Commission Expires: _____

Maureen Fong Hinners
Notary Public

VERIFICATION

STATE OF IOWA

COUNTY OF Linn

SS.

I, Richard Anderson, being duly sworn depose and state that I am Vice President of Operations of CBEC Railway, Inc , that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.

Richard Anderson
Richard Anderson

SUBSCRIBED AND SWORN TO before me this 30 day of September, 2013, in the County of Linn, State of Iowa

My Commission Expires: Oct. 25, 2016

Notary Public

